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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

Term No. 104.

GEORGE WEATHERHEAD ET AL.,
Appellants,
v.
WILLIAM COUPE ET AL.

BRIEF
FOR
APPELLANTS.

BRIEF.

This is an appeal from the decree in equity of the Circuit Court for the First Circuit and District of Rhode Island.

William Coupe and another filed their bill, January 11, 1881, against George Weatherhead and others, in that court, alleging infringement of Coupe's patent dated March 18, 1879, for an Improvement in Machines for Stretching Hides, to which the defendants appeared and answered; and the cause having been heard upon pleadings and proofs, the court, at November term, 1882, entered an interlocutory decree holding the patent to be valid and to be infringed by the defendants, and ordering an injunction and reference to a master to take account of profits and damages. The master took such account, finding the amount of such damages and profits to be $15,412.82, and his report to that effect was confirmed by the court, and a final decree entered accordingly May 6, 1889, from which decree the defendants appealed to this court.

The decree is now alleged to be erroneous, in that the court adjudged that the defendants had infringed the complainants' patent; and we ask that it be reversed on the ground that *the patent, rightly construed, does not appear, upon the evidence in the case, to have been infringed by the defendants.*

State of the Art *and* Construction of the Patent.

The only mode of stretching whole hides which clearly appears to have been commercially practised prior to the plaintiffs' inven-

tion was the "dog" method, so called, and this method must be understood before coming to examine the Coupe patent.

The dog machine and method are described by Coupe in his deposition, at page 14.

There were two dogs or clamps, corrugated on their inner side so as to hold the leather against slipping. The hide being grasped at two opposite parts of its edge by these two dogs, the dogs were pulled apart, and so the hide was stretched in the line between the two portions to which the dogs were clamped.

Coupe says, —

> "When the hide is stretched sufficiently in that position, the machine is thrown out of gear, . . . the dogs are taken off the hide and *applied to another place*, and so the process is continued until the hide is considered sufficiently stretched. It is a long, tedious, and expensive process, and is not effectual. *The reason it is not effectual is that what stretch it takes out of one place it puts back into another;* consequently by that mode of stretching you cannot get a piece of leather thoroughly stretched. It is not only an expensive system of stretching, but, owing to the incompleteness of the stretching, it makes the leather much harder to curry, making an additional expense. These were my reasons for abandoning the use of the dog-stretching arrangement and looking for something more practical and economical."

On cross-examination (page 64), answer 276, being asked what he means by the "dog" machine taking the stretch out of one part of the hide and putting it into another, he says, —

> "As a representation, I will take this square pocket-handkerchief. I grasp it on the two extreme corners as I would grasp a hide on the extreme ends. I apply the pressure. *The consequence is that the hide contracts in the centre. You simply*

stretch it lengthwise but not crosswise. You remove the hide, or the handkerchief, from that particular position, grasp it at *two other extreme points*, apply the pressure: the consequence is, the stretch you took out before comes right back into the hide."

We shall now see, by examining the patent, that the invention patented is a machine and method by which the hide is *stretched longitudinally and transversely at the same time*, as contrasted with stretching it first in one direction across the hide and then in another direction transverse to the first, as in the "dog" machine and the handkerchief illustration.

The patent (see page 8) says, —

"The invention hereinafter described relates generally to an improved method of stretching and reducing to a uniform thickness the hides of animals previous to said hides being manufactured into dressed leather, or what is known as "rawhide;" and it particularly relates to a combination of mechanism which, accompanied by certain hand manipulation, will accomplish the desired result of stretching and reducing the hides, as above mentioned.".

After describing the condition in which the hides are before being treated by the method, he proceeds thus:

"My invention consists in a combination of mechanical devices which are capable of producing, in connection with hand manipulation, the desirable results of *thoroughly stretching the hides and rendering them of even thickness in all parts;* the said devices comprising, in the main, *a friction table or beam* over which the hides are dragged, *a stretcher bar of suitable form for stretching the hides transversely*, and a slowly revolving *roller*, to which the edge of each hide is secured,

and around which it is wound after being drawn over the table or beam and the stretcher-bar."

He then proceeds to describe, with reference to the drawings, these several devices and their combination; in regard to which description, two remarks are to be made: *first*, that the friction beam and stretcher-bar are described as capable of a certain *lateral movement*, which is not in question in this case, and *secondly*, that *the stretcher-bar* is described as shown at K in the drawings, "*having its two working faces doubly inclined* as at *k*, *k'*, fig. 3."

He then proceeds as follows: —

"The methods of treating the hide and the operation of the mechanism above described are substantially as follows: A hide, as it comes from the vat, wrinkled and fulled, and with its various parts of unequal thickness, is placed over the table or breast-beam H *and one of its ends carried under the stretcher-bar* K and *secured to the roller* E by the clamp *e*, the other end hanging free in front of the machine, as shown in fig. 2. The operator now connects the rollers E to the continuously revolving gear D by means of the handle C and clutch F, and the *roller* E *slowly revolves, winding the hide around its surface, and drawing the said hide over the friction table or beam* H, *and around the stretcher-bar* K.

"When any part of the hide whose thickness should be reduced, or whose wrinkled or fulled portion is to be smoothed out, passes over the table or beam H, the operator, who stands in front of said beam, *applies pressure by hand to the proper portions, thereby increasing the friction between the under surface of the hide and the surface of the bar* H, *and causing the onward movement of such portions of the hide to be retarded. The portions thus pressed upon, therefore, are more severely stretched* than other parts of the hide, and by proper manipulation by the attendant its thickness is rendered uniform, and it *passes to the stretching-bar* K *in a smooth condition*, having been *longitudinally stretched upon the beam* H.

"*In passing over the bar* K, *the hide is transversely stretched by the doubly inclined sides* K, K', from which it passes onward to the roller E, winding about said roller uniformly and smoothly.

"*The machine is now stopped, the hide removed, another secured to the roller* E, *and the operations above described are repeated.*"

It is important to notice the operation of the *stretcher-bar* K.

It is explained by *Spencer*, the expert for defendants, whose testimony in this particular is not disputed. He says (page 134), —

"As I understand its operation, said bar, made highest in the centre, or with 'its sides doubly inclined,' causes that part of the hide passing over its highest point to make a longer circuit in passing from the table H to the roller E than do the other parts, and thereby to stretch such part somewhat more than the other parts, and to exert upon the hide a tendency to pass laterally towards the ends of the bar or through a shorter circuit."

(In other words, the hide on either side of the apex of the stretcher-bar, in its effort to get into the shortest line of passage to the roller, is strained towards the foot of the incline, or *transversely to the line of movement of the hide towards the roller* E.)

"This tendency is of little or no consequence except as the mechanism is assisted in its work by the hands of the operator pressing upon the hide."

(This is because there is no strain at all except by the pressure of the operator's hands resisting the pull of the roller.)

"The function of the bar K then is, according to the patent, when assisted by hand manipulation, *to give to the hide a*

lateral stretch simultaneously with its longitudinal stretch while being drawn through the machine by the roller."

The operation of the machine is now clear.

The hide, being held back by the pressure of the operator's hands against the pull of the roller, is strained longitudinally by the pull of the roller, and while moving to the roller under this strain, is made to pass against the stretcher-bar, whose doubly inclined sides cause it to be strained transversely also; all in consequence of the same pull of the roller against the resistance of the downward pressure of the operator's hands on the portion of the hide that hangs over the friction beam.

(The words "longitudinally" and "transversely," describing the direction of the stretch, are to be understood thus: *longitudinally* as meaning in the direction from the operator's hands towards the roller E, and *transversely* as meaning in the direction transverse thereto.)

The manifest theory of the machine is that the longitudinal stretching is done by the pull of the roller against the resisting pressure of the operator's hands, and the transverse stretching is done by the same pull *caused, by the form of the stretcher-bar, to exert itself transversely also.*

Stretching the hide laterally is as necessary as stretching it longitudinally, and each of these stretchings is an operation by which the hide is "reduced to uniform thickness" by permanently flattening out and swaging the body of the hide at those places where it is too thick.

The severity of the stretching operation may be inferred from the statement made in evidence by the plaintiffs that it results in a permanent increase of area of the hide by about five per cent *more* than by the use of the "dog" stretcher.

It will be observed that, whereas in the "dog" stretcher the hide was grasped by the two dogs at opposite portions and strained on *that* line, and then taken out and grasped by the dogs at two other opposite portions and strained on *that* line (transversely to the previous line), and so on till it was stretched throughout, the hide, in the mode of proceeding described in the patent, has the *end of each hide* attached to the roller, and is then drawn through under the simultaneous longitudinal and transverse strain as described, when "*the hide is removed, another secured to the roller* E, *and the operations above described are repeated.*"

The method of simultaneously stretching in both directions, longitudinally and transversely, is in distinct contrast with the old "dog" method of stretching the hide first in one direction, and then taking it out and grasping it at another place and stretching it in a direction transverse to the first.

The testimony of the inventor, Mr. Coupe, to the practical *necessity*, as he considers, of having the stretching in both directions done *simultaneously* and of having the machine provided with the doubly inclined stretcher or some equivalent to produce the transverse stretching at the same time with the longitudinal stretching, is very explicit.

He says (page 31) that after he got the idea of having the hide pulled by a roller over a friction beam on which it lay loosely so as to be manipulated, he "concluded to build an entire machine, having by this time *discovered the necessity of a crowning bar* to stretch whole hides." The only use of the crowning bar, *i.e.*, convex stretcher-bar, is to give transverse stretch *while* the hide is longitudinally stretched.

He is asked on page 53 (*Q.* 195), "Does the machine described in your patent stretch a whole hide *both ways at the same time*, that is to say lengthwise and laterally?" And he answers *Yes.* He is then asked, "How and by what means is this double oper-

ation effected ?" And he describes the operation of the machine as being that, while the hide commences to pull *lengthwise* by the pull of the roller as soon as the hands are applied, the leather begins to spread *crosswise at the same time*, "*owing to the crowning of the bottom bar . . . causing that crosswise stretching*."

He says, on page 66, —

> "It is always, as a rule in stretching whole hides, *necessary to stretch both lengthwise and crosswise at the same time, to prevent the stretch that is taken out of one part of the hide from going back into the other*."

On page 15, —

> "The advantage of the machine described in my patent is that *when it takes the stretch out of one part of the hide it keeps it out*."

On page 54, —

> "To the best of my knowledge, before the invention of my machine, hides were never stretched *lengthwise and laterally at the same time*."

On page 165, —

> "If the machine would not stretch lengthwise and crosswise at the same time it would be of no use as a hide-stretching machine."

It is *because* the hide is, by the patented method, stretched transversely *at the same time* that it is stretched longitudinally, that the hide may be, as the patent says it is, *completely stretched in one single passage through the machine*, neither stretch taking out the other, as is alleged to be the result where they are not simultaneous but consecutive.

THE CLAIMS.

(See page 10.)

The *first* claim is for "the combination of a *friction table* or *beam*, over which the hide is drawn, a *stretcher* substantially as described, and a *revolving roller* to which the hide is secured and around which it is wound as the hide is drawn over the friction beam and stretcher, substantially as set forth."

The *second* claim is for the same combination, with the addition of the capacity of the friction beam and stretcher to yield laterally. This claim was held by the court below to be not infringed.

The third claim is as follows: —

> "The improvement in *the method* of stretching hides, which consists in dragging the hide over *a stretcher*, and also over *a friction table or beam*, by means of *a revolving roller*, to which the hide is secured as described, whereby, as the hide is passed over the table or beam, the thicker portions of the hide are detained or made to lag by pressure applied to such thicker portions, to increase at such points the friction between the hide and the table, substantially as specified."

We understand the opinion of Judge LOWELL (see page 217) to find infringement on the first and third claims.

As to the *third* claim, he says (page 219), —

> "The third claim appears to be for the exclusive right of using the machine referred to in the first claim, and as the defendants have used such a machine, they have idfringed the third claim, and *we do not at present see how it could be infringed otherwise than by infringing the first claim*."

We accept this construction. A broader one was apparently contended for by the plaintiffs at the hearing, but disallowed by the

court. This broader construction we shall have occasion to refer to hereafter.

The question then is, *What is the combination covered by the first claim?* For if the defendants have used that combination, they have infringed the first claim and have also practised the method (or, as the statute calls it, the *art*) covered by the third claim.

In considering the construction of the first claim, let us bear in mind that the machine appears by the specification to be designed to accomplish the object of simultaneously stretching the hide both longitudinally and transversely *at one single passage* of the hide through the machine.

The specification says, —

> "In passing over the bar K the hide is transversely stretched by the doubly inclined sides *k*, *k'*, from which it passes onward to the roller E, winding about the said roller uniformly and smoothly. *The machine is now stopped, the hide removed, another secured to the roller* E, *and the operations above described are repeated.*"

We should not contend that the patented operation did not include passing the hide through the machine more than once, where a single passage failed to produce a perfect result; but it is clear that the combination used is *intended* and *expected* to produce complete longitudinal and transverse stretching simultaneously at one single passage through the machine; putting upon the hide the severe stretching action, transverse as well as longitudinal, necessary for that purpose.

Again, as the alleged infringement of the first claim consists in its *use* by defendants, the manner in which they use it (if they use it at all), as compared with the manner in which the patent directs it to be used, may become material, — as it certainly is with regard to the third, or *method*, claim. The manner of use directed by

the patent is clearly that the transverse stretching shall be simultaneous with the longitudinal stretching; and it will appear hereafter that the defendants *do not so use their machine*.

We submit that the combination covered by the first claim is, (1) the friction table or beam, (2) the revolving roller, and (3) a stretcher, *interposed between* the friction table or beam and the revolving roller.

The specification says that the hide —

> "*passes to* the stretching bar K in a smooth condition, *having been* longitudinally stretched upon the beam H. In passing over the bar K the hide is transversely stretched by the doubly inclined sides *k*, *k'*, from which it passes onward to the rollers E." . . . "It will be seen that my improvement in the method of stretching hides results from the combination of the mechanical agencies mentioned, coupled with the manipulation of the hide as it passes over the friction table or beam, at which time it is smoothed from wrinkles and reduced to a uniform thickness."

That is to say, —

(1) The hide is smoothed from wrinkles and reduced to uniform thickness by being pressed against the friction table or beam, coupled with the pull of the roller E.

(2) In this smooth condition it *passes to* the stretcher-bar, whose peculiar form, as the hide rubs past it, causes the hide to be stretched laterally also:

Therefore we say that the combination of the first claim is of —

(*a*) The friction table or beam, the hand pressure on which *smooths out wrinkles* and reduces thick places by retarding the hide where it is thick, and produces a longitudinal stretch by holding back against the pull of the roller.

(*b*) The stretcher-bar to which the hide passes, in such smoothed

and longitudinally stretched condition, and the form of which, as the hide is strained against it, gives lateral stretch to the hide.

(*c*) The roller to which the hide next passes, and whose pull, coupled with the hand pressure on the friction beam, causes the longitudinal strain and (because of the properly formed stretcher-bar) the transverse strain.

The operation of the whole being to stretch the hide longitudinally and transversely at the same time.

And the method or "art" claimed in the third claim is the stretching of whole hides by substantially the above-described operation.

Of course the claimed method or art *excludes* any mode of operation in which the transverse stretching and the longitudinal stretching are not simultaneous but are consecutive.

Defendants' Machine and Method.

The defendants' machine has not the stretcher-bar K *for transverse stretching, nor anything that performs the same operation. It has no occasion for the use of any such thing*, because the transverse stretching is *not done simultaneously* with the longitudinal stretching.

The defendants' method is not the same as that of the patent. It is to grasp the hide by two opposite portions of the edge and stretch it on that line; then to take the hide out, grasp it by two other opposite portions of the edge and stretch it on that line, transversely to the first, and so on; thus getting the transverse stretch by that very method of consecutive (instead of simultaneous) stretching which the plaintiffs' testimony condemns as characteristic of the old "dog," and which the plaintiffs' patent excludes.

We will first refer to the testimony showing *the method* practised by the defendants:

The defendants' expert, Mr. Spencer, thus describes it (see page 136) as witnessed by him:

> "Two workmen were employed; they inserted the hide endwise beneath the bar and above the trough or groove; clamped the forward end to the roller; raised the trough into close contact with the hide by operating the lever at the end, so that the hide was seized firmly on its opposite sides between the stretcher-bar and a block of wood in the bottom of the trough. Motion was then given to the roller, winding the hide upon it and drawing it with tension along that part against which the bar in the trough was pressed. During this operation, the workmen, one man each end of the machine, smoothed the wrinkles or folds at the sides of the hide, and assisted by pulling or pressing the hide at those points, that it might pass through readily. Each hide was passed through three times from one end, then three times with the other end first, then three times sidewise from one direction, and finally three times sidewise from the other direction, that is, with the other side first; making twelve times. When it was passed sidewise it was held to the roller at two different points, — near the ends, — and lateral stretch was given to it during these sidewise passages under the same conditions that the longitudinal stretch was given by passing endwise."

At the foot of page 136 he corrects his mistake in saying that there was "a *strictly sidewise* movement of the hide." He says it "was more properly *oblique*."

On the cross-examination (page 149), he is asked (*cross-int.* 62), —

> "In stretching a whole raw-hide from one of its shanks, is it not necessary that the hide should be stretched both laterally and longitudinally *at the same time*, at least be subjected to sufficient lateral stretch to keep the wrinkles out? *Ans. If*

the entire stretching is effected from one of its shanks I should answer, yes; but, as I have explained, this is not the manner in which the defendants' machine works. In that machine the hide is stretched laterally to a sufficient extent by attaching it at different points and passing it through the machine with the line of tension running in different directions at different times. Where one point of attachment only is employed, it is evident that such transverse stretch as the hide would receive must be given to it *at the same time* that the longitudinal stretch is imparted. . . . *Cross-Int.* 64. Referring to the last part of your answer to direct interrogatory 7, if you were in error in thinking that the defendants give a strictly sidewise movement to the hide in their machine, was it not also incorrect to suppose that the lateral stretch was given to the hide by such sidewise movement? *Ans.* No, because *the stretch effected by drawing the hide from one shank is on a line almost exactly at a right angle to the line of stretch imparted by drawing it from the other shank, and hence these two forces, or the tension imparted from these directions, give to the hide strains which may be termed lengthwise and crosswise; they are tranverse to each other, and stretch the hide in transverse directions, with the same results and to the same extent as though one was absolutely lengthwise and the other absolutely crosswise of the hide.* The lateral stretch was not due to a strictly sidewise movement, but due to a movement in a direction transverse to the former movement which I had termed longitudinal. The second movement was not strictly sidewise, nor was the strain thereby effected strictly a lateral strain, but *the second movement and the strain produced by it was transverse, or substantially at right angles to the first.* *Cross-Int.* 65. The fact is, is it not, that the two forces which you have referred to do not act simultaneously, and hence cannot be productive of a resultant force? *Ans.* *It is a peculiarity of the defendants' machine, as distinguished from that described in the patent in suit, that the strains are successively imparted rather than simultane-*

ously imparted, as is obvious from the description given of the operation of the former which required changing of the hide and applying the strains from different directions. The machine and process referred to in the patent make no allusion to such mode of operation, but on the contrary describe devices and mode of operation in which all the strains, longitudinal and transverse, are given simultaneously."

There is no attempt to contradict Spencer's account of the defendants' method as thus far described; and it is manifestly a method of stretching the hide in the two desired directions by successive and independent stretching operations, and not simultaneously.

The theory on which the Coupe invention proceeds is that unless the hide is stretched transversely *while* it is strained longitudinally, the stretch put into it when it is strained in one direction will be taken out of it (or partially so) when it is strained in the other direction.

However this may be when the hide is passed through in only one direction across its width, the defendants appear to have found in practice that this could be avoided by passing the hide through the machine a sufficient number of times on different diagonals of he hide, *i.e.*, different directions across its width.

It is reasonable to suppose that, by submitting to this expenditure of time and labor, the defendants could get good practical results without employing the method of *simultaneous* stretching in both directions, which (if the Coupe patent tells the truth) will enable the work of longitudinal and transverse stretching to be wholly done at *one* passage of the hide through the machine.

Manifestly, the defendants' *method* of stretching whole hides, thus far, is substantially the "dog" method.

Manifestly, also, supposing that the defendants' machine *did* contain a device for the purpose of producing simultaneous trans-

verse stretching, such device would be useless for that purpose. It would be useless to produce *simultaneous* transverse stretching in the direction of a certain diagonal, when the hide was to be taken out and reattached and stretched longitudinally on that same line.

But the plaintiffs say that the defendants *do* use simultaneous transverse stretch.

This the defendants deny. And to this issue we now ask the court's attention.

The issue is involved in *both* the claims on which infringement has been found.

Is there in defendants' machine any device for producing simultaneous transverse stretch, substantially like the doubly inclined stretcher-bar K of the patent in construction and operation?

Supposing that there is, does the defendants' method, as a whole, embody or involve the simultaneous transverse stretching which is an essential part of the patented method?

Do defendants employ the "doubly inclined stretcher-bar K" *of the first claim, or its equivalent?*

They do not infringe unless they use *that*, or something which has substantially the same operation and produces substantially the same result; and *that they do so*, must be established by the plaintiffs by a clear preponderance of testimony.

The smoothing out of wrinkles, and the stretching or swaging of the body of the leather so as to permanently reduce it to an equal thickness throughout, *are two separate and distinct things, and are so treated by the Coupe specification*, which says (top of page 10) that the hide "passes to the stretching-bar K in a smooth condition," and again (ten lines farther on), "as it passes over the friction table or beam, *at which time it is smoothed from wrinkles*," &c.

Manifestly, the operation of the doubly inclined stretcher-bar K is *not* that of smoothing from wrinkles.

And yet this is all that Judge LOWELL has found that the defendants' alleged substitute for it does.

The defendants have divergent grooves or serrations formed on the surface of the friction table, an old and common device for keeping a sheet of material out flat, and preventing it from drawing together in wrinkles, as it is wound upon a roller. This is all that is pretended to be an equivalent for the stretcher-bar K of the patent.

Judge LOWELL says (218), —

> "These grooves have a tendency to stretch the hide laterally, or at least to prevent it from wrinkling, that is, to keep it to its lateral stretch, *which seems to be much the same thing*."

We submit that Judge LOWELL was not warranted in finding that the defendants' corrugations on the friction beam performed the office which the Coupe stretcher-bar K, interposed between the friction beam and the roller H, does.

He says that the corrugations "prevent it [the hide] *from wrinkling*." That is true.

He adds, "that is, *keep it to its lateral stretch*." That is not true. There has been *no* lateral stretch to "keep it to."

If there were any lateral stretch in defendants' machine, which lateral stretch was *kept from going back* by these corrugations on the friction beam, Judge LOWELL might well enough say that that was "much the same thing" as laterally stretching the hide.

But it is not so. There is *no* lateral stretching in the defendants' machine. The corrugations do not perform that office. That office does not need to be performed at all in the defendants' machine, for the hide is to be taken out and reattached at new points and stretched longitudinally in that very direction in which the previous transverse stretching (if there were any) would have

been. Where an alleged operation is absolutely useless in a machine, we should have pretty clear evidence that it is performed.

What is the testimony as to the actual operation of the defendants' corrugations on the friction beam?

The only man that appears to have actually examined the operation of defendants' machine upon this point was the defendants' expert Mr. Spencer.

He testifies thus (see page 148):

> "*Cross-Int.* 57. Is not the function of the oblique grooves or serrations in defendants' machine, when pressure is exerted upon the hide, to give to the hide a lateral or transverse movement at the same time that it is stretched longitudinally while being drawn through the machine? *Ans.* I think not. It is barely possible that such serrations do, in the very slightest degree, *tend* to carry the hide from the centre. *This would be the case if the hide entered the grooves or serrations, which it does not, in my judgment, to any appreciable extent, if at all. The grooves are not deep enough to have any such effect,* since the hide is spread from end to end of the bar, or substantially so, and there is no indication whatever upon the upper side of the hide that its lower surface enters at all into such serrations. By this I mean to be understood that the upper side of the hide is smooth, or gives no indication whatever that its under surface is not supported by a flat bar or table. *If the hide entered the grooves at all this would not be the case;* but since it is impossible, in the practical operation of the machine, to observe the under side of the hide, I can speak only from observation of the upper surface of the hide.
>
> "*Cross-Int.* 58. And that, you say, appeared smooth where it lay over the grooves or serrations? *Ans.* Yes."

Now this is as clear testimony as the nature of the case admits of, that, as matter of fact, there is *not* any such action of the serra-

tions or grooves as will give any transverse stretch or strain to the hide.

No Testimony is Produced to the Contrary.

Mr. Coupe is recalled, and repeats his testimony that in his opinion the defendants stretch the hide transversely. But he does not dispute the facts asserted by Spencer.

He does not undertake to say, in contradiction of Spencer, that the grooves were *not* too shallow to have any effect in giving lateral movement to the hide, or that the hide would *not* show on the upper side if the under side was engaged at all in the grooves, or that there *was* any appearance on the upper side indicating any such engagement.

He adds, "The hide was stretched in both directions at the same time [this is only opinion], and was both wider and longer when they got through with it than it was when they began on it, also very much more uniform in thickness." This only asserts similarity of *product*, which may well be without similarity of process.

He afterwards several times says that the serrations are the equivalent of the convex stretcher-bar, but nowhere tells us what operation he *observed* from which that would follow.

The expert Miller, who is called (p. 194) in rebutter for the first time, gives as his *opinion* that the corrugations are the equivalent of the stretcher-bar. But it does not appear that he had examined the operation of the corrugations to see what it really was.

Not only do the plaintiffs fail to join issue with Spencer as to what the corrugations actually do, but they seek, in rebutter, to evade that issue by *setting up a new theory of infringement* which makes the corrugations entirely immaterial, and which the court refused to accept.

This will be again referred to later. At present we wish to continue the discussion of the question whether the corrugations

on the defendants' breast-beam are the equivalent of the convex stretcher-bar K of the patent. It seems to us plain they are not.

It has been shown that they cannot perform the operation of the convex stretcher-bar, in any the slightest degree, unless the under side of the hide is pressed down into them so as to engage with them; and all the evidence we have as to that question of fact is that *it is not*.

But, even supposing that they *do* perform the operation of the convex stretcher-bar of the patent, we insist that —

As we have already said, the combination of friction table or beam, stretcher-bar, and take-up roller, which is described in the patent is a combination in which the stretcher-bar is *interposed between* the friction table or beam and the take-up roller, the specification distinctly saying that the hide "*passes to the* stretching-bar K in a smooth condition, *having been* longitudinally stretched upon the beam H" by detaining pressure applied by the operator's hands upon the hide hanging over the friction beam.

If the defendants' corrugations are to be considered as *per se* the equivalent of the convex stretcher-bar of the patent, we say that the organization of defendants' machine by which the detaining pressure on the hide is made upon the alleged equivalent of the stretcher-bar instead of upon the friction beam from which the hide *passes to* the stretcher-bar, is a substantially different organization, which removes from the machine the characteristic operation described in the patent.

On the cross-examination of defendants' expert, Spencer, the appellees try to show that in the patented machine also, the detaining pressure could be applied upon the stretcher instead of upon the beam.

From the witness' answer it clearly appears that *it could not*.

See pages 144 *et seq.*, *ans.* 32–42.

He says, —

"This change would destroy the described operation of the machine, in my opinion."

He is asked (*Int.* 39), speaking of the patented machine, "Might not the equivalent device, whereon hand manipulation of the hide could be effected, be *made a part of and integral with the stretcher* without changing the principle of the stretcher, provided the device be so located that the hide should come in contact with it before reaching the crowning or stretching surfaces?" And he answers, "No." And he adds, "The principle of the invention seems to involve three distinct features, and a certain arrangement of those features with relation to each other, which relation would be wholly inconsistent with the idea of an integral connection of the beam and stretcher-bar. *They are also shown and described as having a movement relatively to each other in their bearings or slots, which is farther inconsistent with their being integral.*"

And this capacity of relative movement is claimed in claim 2 as *an invention* embodied in the described construction.

We have said that the appellees set up a theory of infringement which *made the defendants' corrugations entirely immaterial.* This appears as follows: —

On page 212, the plaintiffs' expert, Miller, is asked and answers as follows: —

"*Cross-Int.* 106. Are the grooves shown in Defendants Model No. 1 essential to the fair operation of the machine? *Ans.* They *facilitate* the operation of the machine, and a machine without these grooves or without some equivalent means to facilitate lateral stretch could not compete in the amount or thoroughness of the work performed with a machine provided with such means.

"*Cross-Int.* 107. *Would you consider defendants' machine with the grooves removed*, but otherwise constructed as represented by Defendants' Model No. 1, *an infringement upon the patent in suit? Ans.* I *would*, for he would have then

a friction table or beam over which the hide is drawn, a stretcher under which the hide is drawn, and a revolving roller to which the hide is secured, and around which it is wound as the hide is drawn over the friction beam and stretcher, as is described in the first claim of the patent in suit; and in such a machine the hide would be dragged over the stretcher and over a friction table or beam by means of a revolving roller to which the hide is secured, and as the hide is passed over the table or beam the thicker portions could be detained or made to lag by pressure applied to such thicker portions to increase at such points the friction between the hide and the table as is specified in the third claim of the patent in suit.

"*Cross-Int.* 108. *Is there any stretcher described, except the bar* K, *with the doubly inclined sides, in the patent in suit? Ans. There is not.*

"*Cross-Int.* 109. *Then would the defendants' machine, with the grooves removed as supposed, have a stretcher which could be called an equivalent of the crowning bar in the patent in suit? Ans.* Reading the specification as a description of the perfect machine, and reading the claims as defining what was new and the invention of the patentee when used in combination, I *hold that the defendants' machine, even with the grooves removed, would have such a stretcher.*"

"*Cross-Int.* 110. State what part of the defendants' machine, after the removal of the grooves, would remain as an equivalent of the crowning bar described in the patent in suit. *Ans.* The fixed central bar and the rear edge of the groove.

"*Cross-Int.* 111. *State how the parts named in your last answer could contribute to the lateral stretch. Ans. They would not contribute to the lateral stretch, but they would allow the hide to be stretched laterally by the hand manipulation on the friction table*, and they would cause such stretch to become permanent as the hide passes over these edges, drawn by the revolving roller.

"*Cross-Int.* 112. Would the hand manipulation in such case take the place of the grooves? *Ans.* It would not take the place of the grooves.

"*Cross-Int.* 113. *If you take away from the defendants' machine the grooves which you have stated in your testimony are the equivalent of the crowning bar in the complainants' machine, and do not substitute anything in place of it, how can you say that defendants' machine would still infringe the patent in suit? Ans.* Because it would infringe the first claim of said patent, which is as follows: 'The combination of a friction table or beam over which the hide is drawn, a stretcher substantially as described, and a revolving roller to which the hide is secured and around which it is wound as the hide is drawn over the friction beam and stretcher, substantially as set forth.' Now, as I am satisfied that a raw-hide can be stretched on a machine having a friction table and a stretcher, even if the same is not crowning, and a roller for drawing the hide through the machine, provided the hide is nowhere sufficiently clamped to prevent *lateral stretch by hand* manipulation, I hold that such a stretcher would be substantially, when used in combination with the roller and friction table, the stretcher referred to in the first claim of the patent in suit, as it would perform the same functions, although not with the same facility, as the crowning bar or the angularly grooved bar."

In pursuance of this "change of base" as to the construction of the patent and the whole matter of lateral stretching, the plaintiffs, when they came to the hearing before Judge LOWELL, sought to give to their third claim a very broad interpretation, — so broad as to eliminate, as unessential, the function of transverse stretching simultaneously with longitudinal stretching. They sought to make the claim cover broadly a method by which, while one portion of the hide was attached to the roller, the opposite portion lay loose and free upon the friction beam, so that it could be manipulated as desired, and instead of simultaneous transverse stretching being essential, all that was required by their construction of the claim,

in that respect, was that the hide should be free to spread laterally under the manipulation of the operator.

Judge LOWELL did not accept this view. He says, page 219, —

> "The third claim appears to be for the exclusive right of using the machine referred to in the first claim . . . and we do not at present see how it could be infringed otherwise than by infringing the first claim."

We accept Judge LOWELL'S *construction of the claim as correct. Our complaint is that he found infringement under that construction.*

To sum up:

The first claim is not infringed, because the defendants do not have the stretcher-bar K, or any substitute for it, performing the same operation in the machine.

a. They have no need of it, because they get their transverse stretch by taking out the hide and grasping it at new points, and stretching between those new points.

b. Their *corrugations* simply keep the hide from wrinkling, an operation which the patent says is performed *before* the stretcher-bar acts upon it. There is no evidence that, as the machine is used, there is any lateral stretching of the hide simultaneous with the longitudinal stretching.

c. Their corrugations (if they can be considered an equivalent for the convex stretcher-bar) are not combined with the friction beam and the take-up roller, as the convex stretcher-bar of the patent is. The convex stretcher-bar is interposed between the friction beam and the roller, and the described operation is that the hide, after being longitudinally stretched on the friction beam, passes to and is stretched by the stretcher-bar; whereas, in defendants' machine, the corrugations are integral with the friction beam.

It would not be practicable to make the convex stretcher-bar of the patent integral with the friction beam.

d. The patent describes the convex stretcher-bar as having a lateral movement relatively to the friction beam; and this excludes the idea of their being integral.

Again, the first claim is not infringed, because the defendants are only sued as *users*, and to make them liable as users it must appear that they use it in the manner described, and so as to get the operation described in the patent; and the mode of operation of defendants' machine, as used by them, is not to stretch the hide longitudinally and transversely at the same time, but to stretch longitudinally in different *successive* directions across the hide.

The *third claim* is not infringed, because the described mode of operation of the combination of the first claim is not performed by defendants. They do not stretch the hide longitudinally and transversely at the same time. If their machine is capable of doing this, it is not so used as to do it.

The decree of the court below should be reversed.

CAUSTEN BROWNE,
WALTER B. VINCENT,
for Appellants.

Office Supreme Court U. S.
FILED.
DEC 14 1892
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1892.

147 US 322

TERM NO. 104.

GEORGE WEATHERHEAD, JOHN E. THOMPSON AND WILLIAM G. EVANS, COPARTNERS AS WEATHERHEAD, THOMPSON & COMPANY, APPELLANTS,

vs.

WILLIAM COUPE AND EDWIN A. BURGESS.

BRIEF FOR APPELLEES

—BY—

WILMARTH H. THURSTON.

PROVIDENCE:
E. A. JOHNSON & CO., LAW PRINTERS,
1892.

Supreme Court of the United States,

OCTOBER TERM, 1892.

TERM NO. 104.

GEORGE WEATHERHEAD, JOHN E. THOMPSON AND WILLIAM G. EVANS, COPARTNERS AS WEATHERHEAD, THOMPSON & COMPANY, APPELLANTS,

vs.

WILLIAM COUPE AND EDWIN A. BURGESS.

BRIEF FOR APPELLEES.

This suit was brought for the infringement of Letters Patent No. 213,323, dated March 18, 1879, granted to William Coupe, one of the complainants, for an Improvement in Hide Stretching Machines.

The Circuit Court found the patent to be valid, and that the appellants had infringed the first and third claims thereof. Opinion of Court, Rec. p. 217.

An interlocutory decree was entered to this effect and sending the cause to a master to take an account of the gains and profits which the defendants had received, and to ascertain and report the damages which the complainants had sustained by reason of such infringement.

The master reported upon the evidence submitted to him that

the defendants had derived from the use of the patented invention gains, savings, profits and advantages to the amount of $15,412.82. Master's Report, Rec. p. 464.

Upon the coming in of the master's report the defendants moved to dismiss the bill of complaint on the ground that a mistake had been made in the former decision of the Court, and at the same time filed numerous exceptions to the master's report. The motion to dismiss was denied, all of the exceptions to the master's report were overruled, and a final decree was entered confirming the right of the master and adjudging that the complainants should have and recover the amount found by the master. Opinion of Court, Rec. p. 468; Final Decree Rec. p. 469.

From this decree the defendants have appealed to this Court.

The Invention of the Coupe Patent.

The character of the invention which forms the subject of the Coupe patent is stated in the specification as follows:

> "The invention hereinafter described relates generally to an improved method of stretching and reducing to a uniform thickness the hides of animals previous to said hides being manufactured into dressed leather, or what is known as 'rawhide'; and it particularly relates to a combination of mechanism which, accompanied by certain hand manipulation, will accomplish the desired result of stretching and reducing the hides, as above mentioned.
>
> "As is well known, all hides vary considerably in thickness at different points, and when taken from the liquor-vats in which they are immersed to remove the hair, etc., they are found to be soft, flabby, wrinkled, and fulled. Owing, therefore, to this condition of the hides, it is necessary, before they are dressed and finished for the market, that they be stretched throughout to remove the wrinkles and fullness, and also to reduce those parts which are

thicker than other portions, so that, as far as possible, the hides shall be uniform in thickness.

"My invention consists in a combination of mechanical devices which are capable of producing, in connection with hand manipulation, the desirable results of thoroughly stretching the hides, and rendering them of even thickness in all parts, the said devices comprising, in the main, a friction-table or beam, over which the hides are dragged, a stretcher-bar of suitable form for stretching the hides transversely, and a slowly revolving roller, to which the edge of each hide is secured, and around which it is wound after being drawn over the table or beam and the stretcher-bar."

The patent relates to a machine and a method for operating upon the hides of animals in the preparation of what is known as rawhide leather. In the manufacture of this rawhide leather the hide is not tanned in tan liquors, but is treated in a manner which leaves it at a certain stage of the manufacture very soft and flabby and in a badly wrinkled condition. The object of the patented machine and method is to properly stretch such a soft, flabby and wrinkled hide, to remove the wrinkles therefrom, and to reduce the hide to a comparatively uniform thickness. The thing to be operated upon is a whole rawhide as distinguished from strips or pieces of tanned leather.

Such a whole rawhide, when brought to the condition in which it is to be operated upon by the patented machine, differs very materially in its condition and qualities from strips of tanned leather, and requires for a proper stretching thereof a very different manipulation and a very different organization of mechanism from what is required for stretching such strips of tanned leather.

In the first place such a whole hide, embracing as it does the head, flanks, shanks, belly, etc., varies considerably in thickness at different points, some portions being materially thicker than other portions, whereas strips of tanned leather are of comparatively uniform thickness.

Again, a rawhide, owing to the fact that it has not been tanned, is soft, pliable and readily stretched in every direction, whereas tanned leather is firm, rigid and comparatively unyielding. Miller's Dep., p. 197, Int. 10; Coupe's Dep., p. 166, Int. 15.

Finally the rawhide, at the time it is to be stretched, is, by reason of certain earlier operations to which it is subjected, very badly wrinkled and fulled, whereas tanned leather is comparatively smooth and free from wrinkles. Coupe's Dep., p. 13, Int. 8; Davis's Dep., p. 113, Int. 31.

The condition of a whole rawhide when ready for stretching is shown by the specimen "Complainants' Exhibit Hide No. 1."

These differences between the condition of a whole rawhide and strips of tanned leather when ready to be stretched are important to be borne in mind in considering the questions involved in the present case.

The machine and method of the Coupe patent were especially designed to thoroughly stretch a whole rawhide in the soft, flabby and wrinkled condition referred to, to remove the wrinkles therefrom, and to reduce the different portions of the hide to a comparatively uniform thickness.

As the result of a series of experiments in attempting to stretch such whole rawhide, Mr. Coupe found that, by reason of the peculiar condition of the hide, the following requirements were necessary in order to secure the desired results.

1. Owing to its soft, flabby condition, the hide must not be griped between opposing surfaces, because numerous experiments proved that the result of drawing such a hide, especially when held by one of its corners, between such griping surfaces, was in-

evitably to cause it to draw together and rope, and to become badly wrinkled and plaited.

2. Owing to the variation in the thickness of different parts of the hide, and the consequent variation in the amount of stretch required to be given to such different parts, it is necessary that during the operation of stretching all parts of the hide should be under the immediate and complete control of the operator, and he should be able at all times to manipulate the hide so as to cause the stretch of any particular part to be increased, decreased, or entirely prevented, as should be required.

3. Owing to the badly wrinkled condition of the hide and the variations in its thickness, and to the fact that one of the objects of stretching the hide is to pull out the wrinkles and to equalize the thickness of the different parts of the hide, the hide should, during the operation of stretching, be free to allow the "stretch" imparted in removing the wrinkles and in reducing the hide to a comparatively uniform thickness to extend laterally as well as longitudinally.

The machine and method of the Coupe patent are especially adapted to meet these requirements, and thus to remove the wrinkles from, and to thoroughly stretch, a whole rawhide of the character referred to.

The characteristic feature of the Coupe invention consists in drawing the hide under tension in a tortuous path over a series of corners or edges, and in enabling the necessary tension to be produced and regulated by the hands of the workman instead of by some positive mechanical means.

In the course of his experiments Mr. Coupe discovered that by drawing the hide under tension over one or more bars affording a series of corners or edges, the hide, instead of being drawn

together and contracted, as it was when drawn between two firmly griping surfaces, was smoothed or ironed out and extended; that by not being griped the hide was free to yield to any lateral extension caused by removing the wrinkles and stretching the different parts of the hide; and, finally, that the tension required to stretch the hide could be readily and efficiently produced by the operator pressing with his hands upon the hide as it passed over one of the bars, thus enabling him to regulate the amount of stretch to be given to any particular part of the hide by simply increasing or decreasing, as required, the amount of pressure exerted, or by lifting over such portions as it was not desired to stretch.

The machine of the Coupe patent is designed to embody these principles, and consists, as shown in the drawings of the patent and in the "Exhibit Model Complainants' Machine," in the combination of two bars, one marked H and the other K, so arranged as not to firmly gripe the hide, but which afford a series of corners or edges over which the hide is to be dragged in a tortuous path, together with a revolving roller, marked E, to which the hide is to be attached, and which, when power is applied thereto, serves to draw the hide over the edges of the bars.

One of the bars, the bar H, which is called in the patent a friction-table or beam, is arranged so that the operator can grasp and exert pressure upon the hide as it passes over such bar, and thus regulate the amount of stretch to be given to the different parts of the hide.

The other bar, K, is constructed with doubly inclined faces, as represented at *k*, *k*, Fig. 3, the object of these inclined faces being to spread the hide laterally as it is dragged over such inclined surfaces under tension, and thus to give to the hide a certain amount of lateral or transverse stretch at the same time that it is stretched longitudinally.

The method of the Coupe patent consists in dragging the hide over the bars of the machine under the influence, and with the aid, of the peculiar hand manipulation on the part of the operator above described.

The claims of the patent held to have been infringed by the defendants are the first and third, and are as follows:

> "1. The combination of a friction-table or beam, over which the hide is drawn, a stretcher, substantially as described, and a revolving roller, to which the hide is secured and around which it is wound as the hide is drawn over the friction beam and stretcher, substantially as set forth.
>
> "3. The improvement in the method of stretching hides which consists in dragging the hide over a stretcher, and also over a friction-table or beam, by means of a revolving roller, to which the hide is secured, as described, whereby as the hide is passed over the table or beam the thicker portions of the hide are detained or made to lag by pressure applied to such thicker portions, to increase at such points the friction between the hide and the table, substantially as specified."

The first claim is for the new combination of mechanical devices embodied in the machine, and the third claim is for the new and improved method of stretching a hide which involves and includes the peculiar hand manipulation described in the patent.

By the machine and method described and claimed a soft, flabby, wrinkled whole rawhide can be thoroughly stretched in all directions, the wrinkles removed, and the hide reduced to a comparatively uniform thickness.

The condition of the hide after it has been operated upon is illustrated by the specimen "Complainants' Exhibit Hide No. 2."

The Prior State of the Art.

The only machine which existed prior to Mr. Coupe's inven-

tion which was in any way adapted for stretching whole rawhides of the character referred to was a machine known as the old "dog" machine. Mr. Coupe was familiar with, and had tried, one of these machines. The construction and operation of this dog machine is fully described in the testimony of Mr. Coupe, Rec. p. 14, and will be readily understood from an examination of the model in evidence.

The organization and operation of this dog machine is radically different from the machine of the Coupe patent, and said dog machine is in no way relied upon by the defendants.

The only other machine for stretching leather of which there is any proof in the record is a machine known as the old belt stretcher, and which is sometimes spoken of in the record as the old splitter stretcher, the latter name having been given to it because it was originally constructed out of an old splitting machine. This old belt stretcher is a machine which was especially designed and employed for stretching strips of tanned belt leather, which are rigid, firm, unyielding, free from wrinkles, and of comparatively uniform thickness, and which require to be stretched only in one direction, to wit, longitudinally.

The construction of this belt stretcher is shown by the model marked "Defendants' Exhibit Model No. 2."

The machine is provided with a grooved bar operated by levers, and a presser-bar arranged to enter the groove in the grooved bar, between which two bars the strip of leather is passed, and there is a roll to which the strip is attached by its end. When the strip of leather is in position the grooved bar is forced up with a powerful pressure by means of the levers, forcing the leather down into the groove of the grooved bar, and bending it around the bottom of the upper bar, and so that it is firmly griped between the opposing surfaces of the two bars. Power is then

applied to revolve the roll, which draws the strip of leather through between the griping surfaces, and thus stretches the strip in the direction of its length.

For the proper stretching of these rigid strips of tanned leather, it is necessary that the leather shall be griped by a powerful pressure, to secure which the machine is provided with compound levers, not shown in the model in evidence, for operating the grooved bar. Weatherhead's Dep., p. 93, Cross-ints. 160, 161; Davis's Dep., p. 115, Int. 53.

Mr. Davis states that by means of these compound levers a pressure of eighteen to twenty thousand pounds to the square inch is obtained. Rec. p. 115, Int. 53.

Mr. Coupe was not only aware of the existence of machines of this character, but had such a machine in his possession and endeavored to stretch whole rawhides upon it before he devised the machine described in his patent. His experiments were entirely unsatisfactory, and proved that while such machine was well adapted for stretching strips of rigid belt leather, it was wholly unsuited for the stretching of soft, flabby, wrinkled whole rawhides, and that for such purpose a machine operating upon entirely different principles was required.

The defendants also had one of these old belt stretching machines and likewise tried to stretch whole rawhides upon it. After testing it they also came to the conclusion that a different machine was needed. Weatherhead's Dep., p. 92, Cross-ints. 153, 154.

The results of Mr. Coupe's experiments to stretch a whole rawhide upon this old belt stretching machine are clearly set forth in his testimony, Rec. p. 14, Int. 9; p. 29, Ints. 42, 43.

Mr. Miller, complainants' expert, also caused an attempt to be

made to stretch a whole rawhide upon the old belt stretcher. The results are stated in his testimony, p. 198, and are shown in the hide experimented upon, which is in evidence as "Miller Exhibit Rawhide."

This old belt stretcher is the machine chiefly relied upon by the defendants to affect the validity or scope of the Coupe patent.

The Old Belt Stretcher,—Defendants' Exhibit Model No. 2.

A comparison of the old belt stretcher with the stretching machine of the Coupe patent will show that the two machines are radically different in construction, in their mode of operation, and in the results produced.

The belt-stretcher is adapted only to stretch strips of belt leather, which are firm and rigid, of comparatively uniform thickness, and smooth and free from wrinkles; whereas the patented machine is adapted to stretch whole rawhides, which are soft, flabby, pliable, of uneven thickness in their different parts, and very badly wrinkled.

Further, the old belt stretcher was adapted to stretch the strips of tanned leather only in one direction. The whole purpose of the machine was to stretch strips of leather for belting to their utmost capacity in the direction of their length, so as to prevent the belt from stretching and becoming loose when put upon pulleys to drive machinery. It would have been a disadvantage to have had the machine stretch the strip of leather sidewise, because such sidewise stretch would, as soon as the belt was put to use, run into lengthwise stretch, and cause the belt to run loose. A strip of leather stretched upon the old belt stretcher always

comes out longer, but narrower, than when it went in. Coupe's Dep., p. 166, Int. 16.

The patented machine, on the other hand, is adapted to stretch a hide in both directions, laterally as well as longitudinally, and is so constructed to allow the "stretch" to run into the width as well as into the length, and the hide when it comes from the machine is both longer and wider than when it went in. Coupe's Dep., p. 166, Int. 17.

The fundamental difference between the two machines consists in the fact that in the old belt stretcher the hide is firmly griped between opposing surfaces, whereas in the Coupe machine it is not so griped, but is instead simply dragged in a tortuous path over a series of corners or edges, the necessary tension or friction being obtained by the workman grasping the hide upon the friction-table of the machine.

This difference in the organization of the two machines is productive of widely different results. If it were attempted to stretch a whole rawhide upon the old belt stretcher, it would be found,

1. That the hide, by being firmly griped, would, especially when attached to the roll by one of its corners, be drawn together, contracted, roped and wrinkled.

2. That by reason of the hide being firmly griped, the operator would not have any control over the different parts of the hide as they passed through the machine, and could not lift over or retard different portions of the hide to vary the stretch to be given to such parts to bring them to a uniform thickness.

3. That by reason of the hide being firmly griped, it would not be free to yield to lateral stretch, but all the stretch must be

in the direction of the pull, having the effect to lessen instead of to increase the width of the hide.

With the patented machine, on the other hand, it will be found,

1. That it causes the hide to be spread or smoothed out, instead of causing it to contract and draw together.

2. That it allows the operator to have complete control over the hide, and by pressing upon or lifting over the different parts of the hide to regulate the stretch to be given thereto.

3. That the hide is free to yield to lateral stretch, and so that the "stretch" caused by removing the wrinkles and reducing the thickness of different parts of the hide may extend in different directions, laterally as well as longitudinally.

In addition to these differences in the general organization and operation of the two machines, there are certain further differences which are important.

The patented machine not only allows the hide to yield to lateral stretch, but is provided with means for causing lateral stretch, whereby the hide is stretched laterally at the same time that it is stretched lengthwise.

The old belt stretcher has no device for causing lateral stretch; the fact that it firmly gripes the leather throughout its entire width would prevent such a device from acting if there were one in the machine; and the necessity of stretching belt leather entirely in the direction of its length would render the presence of such a device a positive disadvantage.

The old belt stretcher thus lacks entirely one of the elements of the patented machine, viz., a device for giving lateral stretch.

Again, in the patented machine one of the bars constitutes a

friction table or beam upon which the workman grasps the hide to produce the necessary friction and to regulate the stretch. In the old belt stretcher neither of the bars constitutes, or is provided with, a friction table or beam, and such a friction table or beam would be of no service in the old belt stretcher. The hide being firmly griped between the grooved bar and the presser bar, no such hand manipulation on the part of the operator would be possible or could have any effect.

The differences between the old belt stretcher and the machine of the Coupe patent are clearly set forth and explained in the testimony of Mr. Coupe and Mr. Miller. Coupe's Dep., p. 165, Ints. 13-16; Miller's Dep., p. 196, Int. 10.

The characteristic difference between the two machines is well illustrated by a drawing introduced in evidence showing sectional views of the operative parts of the two machines. See "Complainants' Exhibit Miller Drawing," opposite p. 199 of the record.

It appears in evidence that at times a presser bar like "Defendants' Exhibit No. 6," having a slightly crowning edge was used in the old belt stretching machine. This fact is entirely unimportant, first, because the use of such a crowning-bar in the old belt stretcher in no way changed the organization or operation of that machine, and, second, because the crowning bar when used had no effect to cause lateral stretch, which is to be avoided in the stretching of belt leather. The strip of leather was still firmly griped, and was not free to yield to any lateral stretch.

The crowning-bar, when used in the old belt stretcher, was employed for an entirely different purpose. Such crowning bar was only used when what are termed "centres" of leather were to be stretched. A "centre" is the strip of leather which is cut from the middle of the hide, or that portion which came from

the back of the animal. Such "centre" is thinner along its middle line—the portions which covered the back-bone,—than along its edges, and the crowning-bar was made use of to fill up this hollow, so that the pressure of the bar should be as nearly uniform as possible throughout the entire width of the strip of leather.

Such crowning-bar was never used when strips of leather other than "centres" were to be stretched, and it is manifest that if it were it would be productive of injurious results, and would defeat the object of the machine, which was to exert equal pressure upon the entire width of the leather. If the crowning-bar were used in stretching strips of uniform thickness, the centre of the strip would be more severely stretched than the sides, which would result in producing a curvature in the leather which would render it unfit for use as a belt. Coupe's Dep., p. 168, Int. 24-29.

The office of the crowning-bar when used in the old belt stretcher was entirely different from the office of the bar with doubly-inclined faces in the patented machine, and the combination of parts in the belt-stretcher, even when the crowning-bar was employed, was radically different from the combination of parts found in the patented machine.

The two machines—the patented machine and the old belt stretcher—are organized upon entirely different principles, have entirely different modes of operation, and produce entirely different results. Each machine is designed to do a special kind of work, and neither machine is adapted to do the work of the other.

The Splitting Machine,—Defendants' Exhibit No. 3.

But little need be said concerning the splitting machine repre-

sented by "Defendants' Exhibit No. 3." This machine is designed for *splitting* rigid tanned leather, and is in no way adapted to *stretch* leather of any kind. It has a roller for pulling the leather through the machine, but that is its only point of similarity to the patented machine.

The addition to this splitting machine of the device represented at *a*, *a*, on the circular, "Defendants' Exhibit A, A," consisting of a serrated or notched surface, does not bring such machine any nearer to the machine of the Coupe patent. This splitting machine, either with or without the device referred to, is not a stretching machine, cannot be used as a stretching machine, and has no relation whatever to the machine of the Coupe patent. Miller's Dep., p. 202, Int. 17.

It is submitted that both the machine and the method described and claimed in the Coupe patent were radically new and unlike anything which was previously known, and that there is nothing in the prior art which can in any way affect or limit the scope of said patent. The patented machine is organized upon an entirely different principle and has an entirely different mode of operation from any prior machine, and the method of the patent is likewise entirely different from any previously employed.

The Defendants' Machine.

Two models of the defendants' machine are in evidence. one presented by the complainants, marked "Complainants' Exhibit Model Defendants' Machine," and the other presented by the defendants, marked "Defendants' Exhibit No. 1." The two models are substantially the same, although it is very probable that the model "Defendants' Exhibit No. 1" may be a more accurate

representation, in matters of detail, of the full-size machine. There is no dispute, however, as to the character and construction of the defendants' machine, and either of said models sufficiently represents the same.

Before examining the construction of this machine attention is called to the course of events which resulted in its production. The defendants, although they had been in the leather business for many years prior thereto, did not commence the manufacture of rawhide leather, that is, leather which is not subjected to tan-liquors, until February, 1880. Weatherhead's Dep., p. 82, Cross-int. 60.

In preparing for the manufacture of this rawhide leather in the fall of 1879, they found they needed a stretcher very much (p. 82, Int. 56), and in an endeavor to find something that would enable them to properly stretch such rawhide leather, they made numerous experiments, and as Mr. Weatherhead puts it, were trying all methods at that time to stretch such leather. Rec. p. 83, Cross-int. 74.

The defendants had at their establishment at that time both the old belt stretching machine and the old splitting machine, and they experimented with both of these machines to see if they could properly stretch rawhides thereon. (Rec. p. 83, Cross-int. 70-75; p. 153, Cross-int. 153, 154). As the result of these experiments the defendants became satisfied that neither of these machines was suitable for stretching rawhides, and they proceeded to build an entirely new machine for the purpose. (Rec. p. 92, Cross-int. 154). Previously the defendant Weatherhead had visited the complainants' establishment and had seen there on at least two occasions Mr. Coupe's patented stretching machine. (Rec. p. 93, Cross-ints. 164-170). When the defendants came to construct a new machine for stretching rawhide leather, they proceeded to build it

as near like Mr. Coupe's machine as possible, constructing it with two bars, one of which was bent or curved. (Rec. p. 78, Int. 20).

This machine was commenced in December, 1879, and completed in January, 1880. (Rec. p. 78, Cross-ints. 176, 177). After the machine was nearly completed, the defendants had so much doubt as to whether they had constructed it correctly, that they decided that it would be better to buy a machine directly from Mr. Coupe (p. 94, Cross-ints. 178-180), and accordingly on January 5, 1880, they wrote to Mr. Coupe inquiring at what price he would sell one of his rawhide stretchers, and whether, if he did not care to sell, he would allow them to use his patterns for the same. (Complainants' Exhibit Letter No. 1, Rec. p. 17).

Mr. Coupe then called upon the defendants, informed them that his machine was patented, showed them his patent, which was examined by both Mr. Weatherhead and his machinist, but declined to sell one of the machines except upon certain conditions. (Coupe's Dep., p. 17, Int. 14). Subsequently, upon Mr. Coupe's still refusing to sell them a machine, Mr. Weatherhead declared that they should have a machine to stretch rawhide. (Rec. p. 19).

The defendants proceeded to complete their machine, presumably with the assistance obtained from the examination of Mr. Coupe's patent. Thereafter, and in August, 1880, Mr. Coupe learned that the defendants were using a rawhide stretching machine, and asked permission to see it. Upon examination he found that it was practically identical with the machine of his patent, embodying as it did two bars, one of which was bent.

Notice was given to the defendants to discontinue the use of the machine. They afterwards informed Mr. Coupe that they had reconstructed the machine so as to take it outside of his patent. Upon examining the machine claimed to have been recon-

structed, Mr. Coupe found it to be substantially the same as before, and notified the defendants that it was still an infringement of his patent. (Rec. p. 21).

Thereafter the defendants again reconstructed their machine, such last reconstruction resulting in the machine represented by the model "Defendants' Exhibit No. 1," which machine they continued to use.

This machine likewise has two bars presenting a series of edges or corners over which the hide is dragged in a tortuous path by means of a revolving roller. The reconstruction involved simply a change in the form and arrangement of the bars, one of the bars being formed in a U-shape and arranged to partially surround the other bar. This plan was hit upon undoubtedly to cause the bars to resemble somewhat in appearance the grooved bar and the presser bar in the old belt stretcher, and the construction of the machne is manifestly an ingenious attempt to conceal behind an apparent resemblance in form to the old belt stretcher the principle and mode of operation of the machine of the Coupe patent.

The grooved bar in the defendants' machine is adapted to be moved up and down by a toggle-lever arrangement to facilitate the insertion of the hides. When a hide is to be inserted, the grooved bar is lowered, and when the hide has been inserted, the bar is raised to a fixed and definite position, and held in that position, by straightening the toggle-levers.

The great and vital difference between the defendants' machine and the old belt stretching machine is that the defendants' machine is so constructed as *not to firmly gripe the hide*, as did the old belt stretcher, but to leave it free and unconfined in the same manner as in the Coupe machine. This was done by making the

space between the two bars, when the grooved bar was raised to its highest position, materially greater than the thickness of a hide.

This difference is clearly illustrated by the sectional view of the machines shown in "Complainants' Exhibit Miller Drawing," opposite p. 199 of the record.

It is plain that the arrangement of bars contained in this machine of the defendants presents a series of corners or edges over which the hide is dragged by the revolving roller, and that all the advantages which come from not firmly griping the hide between opposing surfaces, such as allowing hand manipulation by the operator to produce and regulate the stretch upon different parts of the hide and permitting the lateral extension of the hide, are possessed by this machine.

Further, the U-shaped bar is provided with a lip or extension which constitutes a friction table upon which the operator grasps or presses upon the hide, as indicated in Exhibit Miller Drawing. The old belt stretcher had no such device.

Finally, the defendants' machine is provided with a device for causing lateral stretch, such device consisting of a series of outwardly inclined notches or grooves. This lateral stretching device is placed upon the top of the lip which constitutes the friction table of the machine, so that as the operator presses upon the hide at this point the result of such pressure is to cause the hide, which is soft and flabby, to be forced into the grooves or notches, and to travel along such grooves, which, being inclined outward, thus give lateral stretch to the hide. Nothing of this kind is found in the old belt stretcher.

The defendants evidently did not feel satisfied that their machine was outside of the Coupe patent or that they had suc-

ceeded in concealing the real principle of the machine, for they subsequently, according to their testimony, adopted the practice of using a short piece of board supported on blocks in the trough of the U-shaped bar, which board, it was claimed, came in contact with the hide, so that the hide was grasped between the upper surface of the board and the bottom of the fixed bar. The use of this piece of board was manifestly another attempt to conceal the real principle of the machine.

It appears from the evidence that this piece of board is much shorter than the width of the machine (Weatherhead's Dep., p. 80, Int. 40), and further that it is usually supported upon blocks which would give to it a certain amount of yield or spring (Weatherhead's Dep., p. 87, Cross-int. 110; p. 88, Cross-int. 118), so that if the board comes in contact with the hide at all, it is only with a small portion thereof, and the pressure exerted by it, if any, is a springing or yielding pressure not adapted to firmly gripe the hide. It is evident that the use of such a board does not serve to clamp the hide as it was clamped in the old belt stretcher, and it is certain that if such were the case it would, as has been shown, render the machine worthless as a hide stretching machine.

As a matter of fact, the defendants took very good care that the hide should not be firmly clamped by the board, and to guard against this they changed the boards, or used boards of different thickness, as occasion required. Weatherhead's Dep., p. 85, Cross-int. 96; p. 97, Cross-ints. 204, 205.

Furthermore, it appears from the description of the method of stretching hides employed by the defendants upon their machine as given by Mr. Weatherhead and by the defendants' expert, Mr. Spencer, that as a matter of fact the presence of such board in defendants' machine does not interfere with the manipulation of the hide by the operator in the manner described in the Coupe pat-

ent, and does not prevent the hides from being stretched laterally by the lateral stretching device referred to. Weatherhead's Dep., p. 80, Ints. 43, 45; p. 86, Cross-int. 105; p. 90, Cross-ints. 134-140; Spencer's Dep., p. 136, Int. 7; p. 149, Cross-int. 61; p. 150, Cross-int. 66; p. 154, Cross-int. 90.

As a matter of fact, the piece of board when used would serve to facilitate the lateral stretching of the hide. The piece of board, being short as compared with the width of the hide, and being placed centrally in the trough, would assist the workman in smoothing out the wrinkles, and would serve to spread the hide laterally in each direction, in the same manner as the stretcher bar with doubly inclined faces in the Coupe machine. Miller's Dep., p. 201, Int. 14; Weatherhead's Dep., p. 86, Cross-int. 102; p. 91, Cross-int. 146.

The presence of the board in the defendants' machine in no way changes the character or the operation of the machine, nor does it in any way change the method of stretching hides upon said machine. At the most it simply serves to assist the workman and to do away with a portion of the hand work. Weatherhead's Dep., p. 86, Cross-int. 102.

Infringement.

It is not denied that the hide stretching machine used by the defendants prior to the adoption of the reconstructed machine represented by "Defendants' Exhibit Model No. 1," and the method of stretching hides thereon, were a direct infringement of the Coupe patent. Mr. Coupe testified that said first machine was substantially identical, not only in principle and mode of opera-

tion, but in form and appearance, with the machine described in his patent, and that the method of stretching a hide thereon was exactly like the method of his patent. (Rec. p. 23, Ints. 17-21). This testimony is uncontradicted. As to this first machine no further discussion is necessary. This machine was used by the defendants, and its use constitutes an infringement of the patent in suit.

It remains to consider the reconstructed machine "Exhibit Model No. 1," and the method of stretching hides employed therewith.

In comparing this reconstructed machine of the defendants with the machine of the Coupe patent, regard is to be had, not to the form or appearance of the machines, or their several parts, but rather to the functions which they perform and the results which they accomplish, and the inquiry is, whether the defendants' machine operates in substantially the same way to accomplish substantially the same results. *Machine Co.* vs. *Murphy*, 97 U. S., 120; *Consolidated Valve Co.* vs. *Crosby Valve Co.*, 113 U. S., 157.

It cannot be denied that the defendants' machine was designed and organized to operate in the same manner and to accomplish the same results as the machine of the Coupe patent. Both machines are organized upon the same principle and have the same mode of operation. The defendants' machine, like the machine of the Coupe patent, was designed and is especially adapted to stretch a whole rawhide, to remove the wrinkles therefrom and to reduce the same to a comparatively uniform thickness; it is organized so as not to firmly gripe the hide, but instead so as to afford a series of corners or edges over which the hide is dragged in a tortuous path; it thus causes the hide to be smoothed, or ironed out, instead of causing it to draw together and wrinkle; it leaves the hide free to yield to lateral stretch, and, finally, it al-

lows the operator to have full control over the hide and to manipulate the same to increase or decrease the stretch upon the different parts.

Not only has the defendants' machine the same principle and mode of operation as the machine of the Coupe patent, but it embodies and contains the same parts and the same combination of parts. Thus the defendants' machine contains a friction table or beam over which the hide is drawn and upon which the operator can manipulate the hide and exert such pressure upon the different portions thereof as is required; it also contains a stretcher or means for causing transverse stretch, and it contains a revolving roller to which the hide is secured and around which it is wound as the hide is drawn over the friction beam and stretcher. Coupe's Dep., p. 25, Int. 25; Miller's Dep., p. 196, Int. 10.

It is not denied that the defendants' machine contains the combination of parts above recited, nor is it denied that said machine embodies the combination recited in the first claim of the Coupe patent if that claim be given a broad construction. But the contention of the defendants is, as we understand, that said claim should be limited to a combination which includes as one of its parts a stretcher of the particular form and shape shown in the patent, viz., a bar with doubly inclined faces. The answer to this contention is, that there is nothing which requires the claim to be so limited; that the claim should be construed to include equivalents; and that the lateral stretching device in the defendants' machine is an equivalent for the corresponding device in the patented machine.

The machine of the Coupe patent was the first machine of its kind. It was the first machine organized to stretch whole rawhides by dragging the hide over a series of corners without firmly griping the hide, and it was the first machine organized to stretch a hide both laterally and longitudinally at the same time. The

invention of Mr. Coupe related to the organization of the machine as a whole, and not to the shape or construction of any particular part. The invention consisted in organizing an entirely new machine, and not simply in improving a prior machine of the same general character. The Coupe patent, therefore, we submit, is entitled to a liberal construction under the doctrine of *Morley Sewing Machine Co.* vs. *Lancaster*, 129 U. S., 263, 273.

The lateral stretching device in the defendants' machine is a manifest equivalent for the corresponding device in the patented machine. In the machine of the Coupe patent the bar K is provided with doubly inclined faces upon its under side for the purpose of giving to the hide a certain amount of lateral stretch. In the defendants' machine the corresponding bar, being the fixed bar in the machine, is made without such doubly inclined faces, and instead a lateral stretching device consisting of a series of grooves or notches is placed upon the top of the friction table or beam H. The series of grooves or notches clearly serve the same purpose as the doubly inclined faces referred to in the patent, viz., to give a certain amount of lateral stretch to the hide, and the change in the location of the lateral stretching device in no way changes the operation of said device or the operation of the machine as a whole.

The defendants' machine operates in the same manner as the machine of the Coupe patent, and accomplishes the same results. In both machines the hide is stretched longitudinally by being dragged over a series of corners without being firmly griped, and in both machines the hide is also at the same time stretched to a certain extent laterally by the lateral stretching device. The lateral stretching device in the defendants' machine accomplishes the same result in substantially the same way as the corresponding device in the patented machine, and constitutes a full equivalent therefor. Miller's Dep., p. 197, Int. 10; Coupe's Dep., p. 25, Int. 25; p. 169, Int. 30.

We submit that the defendants' machine is an infringement of the first claim of the Coupe patent.

In the above consideration of the defendants' machine we have referred to the machine without the board in the trough of the U-shaped bar. What has been said, however, applies equally to the machine when used with the board in the trough. This loose board constitutes no part of the machine proper. Such board is no more a part of the machine than are the hands of the operator, and is no more a part of the machine when placed in the trough of the U-shaped bar than it would be if held in the hands of the operator. But even if the board be considered as a part of the machine, it would constitute simply an addition thereto. The machine when used with the board still contains the same parts and the same combination of parts as before, and is likewise an infringement of the first claim of the patent.

We come now to the method employed by the defendants in stretching hides upon the reconstructed machine. Mr. Coupe witnessed the operation of stretching hides upon this machine without the board in the trough. He has given a full description of the method which he witnessed (p. 26, Int. 26), and has testified that said method is exactly the same as the method described in his patent. (Rec. p. 29, Int. 40).

This testimony has not been contradicted, but, on the contrary, has been directly corroborated by Mr. Weatherhead in his description of the method employed by the defendants wher there is no board in the trough. Weatherhead's Dep., p. 80, Int. 43.

From this testimony it is plain that in the method thus employed by the defendants, the hide is dragged over a stretcher and over a friction table or beam by means of a revolving roller, and that the hide in its passage over the friction table is manipulated and pressed upon by the operator so as to regulate the stretch to

be given by the operator to the different parts of the hide. The method so employed by the defendants is identical with the method described in the Coupe patent and recited in the third claim thereof. Miller's Dep., p. 200, Int. 12.

So far as the use of the board in the trough is concerned, such use does not change the method employed. The method remains the same whether the board is used or not. This is shown by the testimony of Mr. Spencer, the defendants' expert witness. Mr. Spencer's testimony relates entirely to the machine when used with the board in the trough, yet it repeatedly appears from his testimony that the method of stretching a hide upon the machine with the board in is precisely the same as the method witnessed by Mr. Coupe upon the machine without the board, and precisely the same as the method described in the Coupe patent. See Spencer's Dep., p. 141, Int. 13; p. 150, Cross-int. 66; p. 154, Cross-int. 90.

The fact is, as stated by Mr. Weatherhead himself, that the only effect of the board is that it serves to assist the workman, or, as Mr. Weatherhead puts it, "does away with a portion of the hand work." Weatherhead's Dep., p. 86, Cross-int. 102; Miller's Dep., p. 201, Int. 14.

The method employed by the defendants with the board in the machine, as described both by Mr. Weatherhead and Mr. Spencer, is the same method as that employed when there is no board in the machine, and is likewise identical with the method described in the Coupe patent and recited in the third claim thereof. Miller's Dep., p. 200, Int. 13.

It is respectfully submitted that the decree of the Circuit Court sustaining the complainants' patent and holding that the defendants have infringed the first and third claims thereof should be affirmed.

In re Accounting.

In the matter of the accounting before the master, counsel for appellees have been informed by counsel for appellants that no errors are to be assigned with reference to the findings of the master or the decree of the Circuit Court in relation thereto, and that no question is to be made before this Court as to the correctness thereof.

It becomes unnecessary, therefore, to enter upon any detailed consideration of this branch of the case.

The accounting was conducted in accordance with the rules laid down in *Mowry* vs. *Whitney*, 14 Wall., 620. The master found, upon the testimony submitted to him, that the defendants had derived gains, profits, savings and advantages from the use of the patented invention to the amount of $15,412.82. The defendants took numerous exceptions to the report of the master, all of which were overruled by the Circuit Court, and a final decree was entered for the amount found by the master.

If this Court shall be of opinion that the Court below was right in holding the complainants' patent to be good and valid, and that the defendants have infringed the same, the appellants make no question, as we are informed, as to the correctness of the amount of gains, profits, savings and advantages thus found by the master and approved by the Court below.

It is respectfully submitted that the decree of the Circuit Court should be affirmed.

WILMARTH H. THURSTON,

Counsel for Appellees.

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RECORD, CASE No. 15,076.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1106.

SUSAN LUXTON, PLAINTIFF IN ERROR,

vs.

THE NORTH RIVER BRIDGE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED JULY 7, 1892.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1892.

1 Supreme Court of the United States.

SUSAN LUXTON, Plaintiff in Error,
ag'st
THE NORTH RIVER BRIDGE COMPANY, Defendant in Error. } Bond.

KNOW all men by these presents that we, Susan Luxton and George J. Luxton, both of Jersey City, Hudson county, New Jersey, are held and firmly bound unto the North River Bridge Company in the sum of five hundred dollars, to be paid to the said company, its successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the eighteenth day of May, eighteen hundred and ninety-two.

Whereas the above-named Susan Luxton has taken a writ of error to the United States Supreme Court to reverse the judgment rendered in the matter of the application of the North River Bridge Company to condemn lands of Susan Luxton by the circuit court of the United States for the district of New Jersey:

Now, therefore, the condition of this obligation is such that if the above-named Susan Luxton shall prosecute her writ and answer all costs if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virtue.

2 SUSAN LUXTON. [L. S.]
G. J. LUXTON. [L. S.]

Sealed and delivered in the presence of—
WILLIAM E. SKINNER.

DISTRICT OF NEW JERSEY, *ss:*

George J. Luxton, of full age, being duly sworn, on his oath says that he is the surety on the foregoing bond; that he is a resident of the county of Hudson and an owner of real estate thereon the value of which is not less than one thousand dollars, and that he is worth more than double the amount of the penal sum in the foregoing bond mentioned over and above all his just debts and liabilities and over and above all incumbrances on his said lands.

GEORGE J. LUXTON.

Subscribed and sworn to this eighteenth day of May, 1892, at Hoboken, N. J., before me—

WILLIAM W. SKINNER,
Commissioner of the Circuit Court of the United States in and for the District of New Jersey.

(Endorsed:) United States Supreme Court. Susan Luxton, pl'ff in error, ag'st The North River Bridge Company, def'd't in error. Bond on appeal. Gilbert Collins, att'y. Approved June 3d, 1892. Edq. T. Green, J. Filed Jun- 8, 1892. S. D. Oliphant, clerk.

1—1106

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in the matter of the application of the North River Bridge Company to condemn lands of Susan Luxton, situate in the city of Hoboken, in the county of Hudson and State of New Jersey, a manifest error has happened, to the great damage of the said Susan Luxton, as by her complaint appears, we, being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second day of July next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of June, in the year of our Lord one thousand eight hundred and ninety-two.

The Seal of the U. S. Circuit Court, Dist. of New Jersey.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey.

[Endorsed:] United States Supreme Court. Susan Luxton, plaintiff in error, *vs.* The North River Bridge Company, defendant in error. Writ of error. Gilbert Collins, attorney for plaintiff in error. Allowed June 3d, 1892. Edw. T. Green, J. Filed Jun- 3, 1892. S. D. Oliphant, clerk.

4 UNITED STATES OF AMERICA, *ss:*

To the North River Bridge Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second day of July next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New Jersey, wherein Susan Luxton is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward T. Green, judge of the district court of the United States for the district of New Jersey and *ex officio* a judge of the circuit court of the United States for said district, in

the third circuit, this third day of June, in the year of our Lord one thousand eight hundred and ninety-two.

EDW. T. GREEN.

[Endorsed:] United States Supreme Court. Susan Luxton, plaintiff in error, *vs.* The North River Bridge Company, defendant in error. Citation. Gilbert Collins, attorney for plaintiff in error. Service acknowledged this tenth day of June, A. D. 1892. J. D. Bedle, att'y for North River Bridge Co., def't in error.

5 United States Supreme Court.

SUSAN LUXTON, Plaintiff in Error,
vs.
THE NORTH RIVER BRIDGE COMPANY, Defendant in Error.
} On Writ of Error to United States Circuit Court.

Assignments of Error.

Susan Luxton, by Gilbert Collins, her attorney, comes and says that in the record and proceedings aforesaid and in the giving of judgment there is manifest error in this:

First. That in and by said judgment it was ordered and adjudged that commissioners should be appointed and such commissioners by said judgment were appointed to examine and appraise certain lands of Susan Luxton required and necessary to be taken by the North River Bridge Company and to assess the damages to be sustained by her in consequence of the taking and occupancy thereof.

Second. That said judgment was given in favor of the North River Bridge Company, granting the prayer of its petition against Susan Luxton, whereas by law said judgment ought to have been given for Susan Luxton against the North River Bridge Company, and the prayer of said petition should have been denied.

Third. That by said judgment it was adjudged that the power of eminent domain had been conferred upon the North River Bridge Company to take the land of Susan Luxton in the city of Hoboken, New Jersey, for the purposes of its bridge against her will by force of the act of Congress approved July 11, 1890, in said judg-
6 ment cited, whereas it should have been adjudged that no power to take said lands was conferred by said act or could be conferred by Congress, and the appointment of commissioners should have been denied.

And said Susan Luxton prays that the judgment aforesaid for the errors aforesaid and for divers other errors in said record and proceedings may be reversed and annulled, and that she may be restored to all things which she has lost by occasion of said judgment.

GILBERT COLLINS,
Attorney for Plaintiff in Error.

(Endorsed:) United States Supreme Court. Susan Luxton, pl'ff in error, *vs.* The North River Bridge Company. On writ of error, &c. Assignments of error. Gilbert Collins, att'y. Filed Jun- 8, 1892. S. D. Oliphant, clerk.

7 To the judges of the circuit court of the United States for the third circuit, in the district of New Jersey:

The North River Bridge Company, by this its petition and application, respectfully shows to your honors:

1. That your petitioner is a corporation duly organized under the provisions of an act of Congress of the United States entitled "An act to incorporate the North River Bridge Company and to authorize the construction of a bridge and approaches at New York city, across the Hudson river, to regulate commerce in and over such bridge between the States of New York and New Jersey, and to establish such bridge a military and post road," which act was approved by the President July 11, 1890, and is published as chapter 669 in the Statutes of the United States of America, passed at the first session of the Fifty-first Congress, page- 268–271, and to which reference is made for the full particulars thereof.

2. That such organization was made under the said act of Congress according to the provisions thereof, and was empowered therein "to locate, build, maintain, equip, and operate a bridge, proper approaches thereto, and terminals, appurtenances, and works connected therewith, across the Hudson river in and between the city of New York, in the State of New York, and the State of New Jersey, and to lay tracks thereon for the connection of the railroads on either side of said river in order to facilitate interstate commerce in the transportation of persons and property and for vehicle, pedestrian, postal, military, and other purposes; provided that said bridge shall have not less than six railroad tracks, with a
8 capacity for four additional tracks for future enlargement, and shall be constructed with a single span over the entire river between the towers located between the shore and the established pier-head lines in either State and at an elevation above the river not less than that of the existing Brooklyn suspension bridge over the East river, and which elevation may be increased by the Secretary of Was as hereinafter provided, and that no pier or other obstruction to navigation, either of a temporary or permanent character, shall be constructed in the river between said towers."

3. By section 2 of the said act it is provided that the construction of said bridge shall be commenced within three years after the passage of the act and completed within ten years after the commencement of construction, but that the Secretary of War could extend the time for the commencement of construction for two additional years as mentioned therein. It is also further provided in that connection that the company shall submit to the Secretary of War a plan of the bridge, with a map of the river as therein prescribed, and after a hearing, as provided therein, the Secretary of War is authorized and directed, upon being satisfied that a bridge built on the plan and at the locality submitted would conform to the conditions of the said act, to notify the company that he approves the plans therefor, whereupon the said company may proceed to the erection of said bridge; all of which was done according to the requirements of the said act, and the company was on the twenty-

ninth day of December, 1891, notified by the Secretary of
9 War that he approved the plans for said bridge and at the
locality contemplated, which locality is hereinafter more particularly described.

4. By section four of the said act of Congress it is provided that for the purpose of carrying into effect the objects stated therein the persons named in the first section thereof and their associates are constituted and created a body corporate in law to be known as the North River Bridge Company with the powers therein mentioned, among which it is provided that the corporation so created may receive, purchase, and also acquire by lawful appropriation and condemnation, upon making proper compensation therefor, to be ascertained according to the laws of the State within which the same is located, real and personal property and rights of property, and to mortgage, encumber, charge, pledge, lease, sell, assign, and convey the same, and generally and specially, for the fully carrying out of the purposes and intentions of the said act, the said company shall have and possess all such rights and powers to enter upon lands and for the purchase, acquisition, condemnation, appropriation, occupation, possession, and use of real estate and other property, and for the location, construction, operation, and maintenance of said bridge with its approaches, terminals, and appurtenances as are possessed by railroad or bridge companies in the States of New York and New Jersey respectively. It was also provided in said section four, among other things, that all persons, railroad and telegraph companies respectively desiring to use said bridge shall have and be entitled to equal rights
and privileges in the passage over and the use of the same
10 and the approaches thereto, for a reasonable compensation,
&c.; also that sufficient trackage and terminal facilities shall be provided for all railroads desiring to use said bridge and appurtenances; and further "in case any litigation arises out of the construction, use, or operation of said bridge or approaches thereto and railroads thereon, or for the condemnation or the appropriation of property in connection therewith under this act, the cause so arising shall be heard and tried before the circuit court of the United States for the judicial district in which the bridge or one of the approaches is located," and that "applications for condemnation or appropriation of property shall be made in the circuit court of the United States for the district in which such property is situated, upon the petition of said company, and the hearing and trial of all other proceedings thereon shall conform as nearly as may be to the practice in the courts of the State in which such district is situated in the case of condemnation or appropriation of property for railroads."

5. The location of the said bridge across the North or Hudson river and the approaches thereto in New Jersey, for the North River Bridge Company, under said act is as follows:

"The centre line of said bridge is on a straight line, intersecting the easterly line of 10th avenue 150 feet north of the centre line of 23rd street, in New York city, and intersecting the westerly line of

Bloomfield street, in Hoboken, New Jersey, 150 feet north of
11 the centre line of 12th street, thence by a curve of 5,000 feet radius to a straight line running parallel with and 150 feet north of the center line of said 12th street in Hoboken continued; thence by a curve of 5,000 feet radius to a straight line between Hague street and Lake street, in West Hoboken, intersecting Spring street 120 feet north of the center line of Lake street and intersecting Grand avenue 120 feet south to the center line of Hague street. At Grand avenue said center line splits into two branches, the north branch curving north with a radius of 1,200 feet to a connection with the tracks of the Northern Railroad of New Jersey and the southern branch curving south with a radius of 1,300 feet to a connection with the tracks of the same railroad. The North River Bridge Company has also located and surveyed terminals and connecting approaches to the railroads west, south, and north of the above-described location in Bergen county, and will file a map of such additional location at a later date. The width of right of way required will be 400 feet, or 200 feet for each side of the center line from the State line to Park avenue, in Hoboken, and 250 feet or 125 feet on each side of center line from Park avenue, in Hoboken, to Grand avenue, in Jersey City; from Grand avenue to junction with the railroad tracks north and south, the right of way required will comprise all land located in the fork between the north and the south curve, with an additional width of 125 feet on the outside of each of said curves."

All of the land included in said location as described within
12 the State of New Jersey is situated within the cities of Hoboken, West Hoboken, and Jersey City, in the county of Hudson, said State of New Jersey. The description of said location as above given, together with a map accompanying the same and in connection therewith, were deposited by the petitioner in the office of the secretary of state of the State of New Jersey on the tenth day of February, 1892, and which show the location and survey of the bridge aforesaid, with its approaches and terminals as determined upon and located by your petitioner, and which are in accordance with the plans approved by the Secretary of War as aforesaid.

6. The route of the approaches to said bridge as located and included within the description and survey aforesaid and deposited in the office of the secretary of state, and within the scope of the plans approved by the Secretary of War, as aforesaid, runs over and across and includes certain lands in the said city of Hoboken, in the county of Hudson, State of New Jersey, which are owned by Mrs. Susan Luxton, who resides in Jersey City, State of New Jersey, which lands consist of five lots known and distinguished upon a certain map entitled "Map of property situate at Hoboken, Hudson county, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots November —, 1860, by Daniel Ewen, Austin D. Ewen, city surveyors, New York," on file in the office of the register of the said county of Hudson, as lots numbered seven (7), eight (8), nine (9), ten (10), and eleven (11), in block number one hundred

and seven (107), fronting and facing on the easterly side of
13 Madison street, each lot being twenty-five feet front and rear by one hundred feet in depth throughout, and said lots are required and necessary to be used and taken in the construction of said approaches, a description and map of which lots so necessary and required are hereto annexed and referred to and made a part of this petition and application; the said lots are correctly laid down thereon, the centre line of the approach to said bridge running through the middle lot; the said map also corresponds with the Coster map above referred to and shows the correct location of the said lots; the said lots are situated between 12th and 13th streets in the city of Hoboken as aforesaid, and the centre line of the approaches as hereinbefore referred to runs through the middle lot of the five.

7. Your petitioner and the said Susan Luxton cannot agree for the use or purchase of the said land so required and necessary to be taken for the construction of said approaches, although your petitioner has attempted in good faith to agree with the said Susan Luxton as to the price or value of said land and has offered and is ready to pay the full price and value thereof; that the only person or corporation interested in the said land so required and necessary to be used in the construction of said approaches is the said Susan Luxton, the owner of the said lots aforesaid, the same being vacant and unoccupied.

8. Your petitioner therefore requests your honors to appoint three disinterested, impartial, and judicious freeholders, residents of the said county in which said lands lie, commissioners to examine
14 and appraise the said lands so required and necessary to be taken as aforesaid in the construction of said approaches and to assess the damages to be sustained in consequence of such taking and occupancy thereof, and whatever said commissioners so to be appointed are authorized or required by law to assess, and that your honors will appoint *and* time when and place where your honors will proceed to hear this application and make the said appointment, and that your honors will prescribe the notice to be given to said owner of said lands of the said application and of the time and place of hearing the same.

And your petitioner, as in duty bound, will ever pray, &c.

Dated February 23, 1892.

NORTH RIVER BRIDGE COMPANY,
By BEDLE, MUIRHEID,
McGEE & BEDLE, JR., *Attorneys.*

STATE OF NEW JERSEY, } ss.:
County of Hudson, }

Gustav Lindenthal, of —, being duly sworn, on his oath saith that he is the chief engineer of the North River Bridge Company, in charge of the construction of the bridge and approaches thereto of the said company, and that the matters and things in the foregoing petition or application set forth are true to the best of deponent's knowledge and belief.

Deponent further saith that the annexed papers are a correct and particular description and map or survey of the land (being five lots) owned by Susan Luxton, and which lots are necessary
15 and required to be taken in the construction of the approaches for the said bridge, and that said company has endeavored to acquire said lots by purchase, but has been unable to agree with the said Susan Luxton as to the price therefor, and that the said company cannot agree with the said Susan Luxton for the use or the purchase thereof.

GUSTAV LINDENTHAL, *Ch'f Eng'r.*

Sworn and subscribed before me this twenty-third day of February, A. D. 1892.

L. D. FOWLER,
[L. S.] *Notary Public, N. J.*

All those certain five lots, tracts, or parcels of land and premises hereinafter particularly described, situate, lying, and being in the city of Hoboken, in the county of Hudson and State of New Jersey, and which are known and distinguished upon a certain map, entitled "Map of property situate at Hoboken, Hudson county, New Jersey, belong- to the estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen, Austin D. Ewen, city surveyors, New York," on file in the office of the register of the said county of Hudson, as lots numbered (7) seven, (8) eight, (9) nine, (10) ten, and (11) eleven, in block number (107) one hundred and seven, fronting and facing on the easterly side of Madison street, each lot being twenty-five feet front and rear by one hundred feet in depth throughout, as by referring to said map will more fully appear.

(Here follows map marked p. 16.)

17 (Endorsed:) U. S. circuit court, district of New Jersey. In the matter of the application of the North River Bridge Co. to condemn land of Susan Luxton. Petition, &c. Bedle, Muirheid, McGee & Bedle, Jr., att'ys of petitioner. Filed Feb. 29, 1892. S. D. Oliphant, clerk.

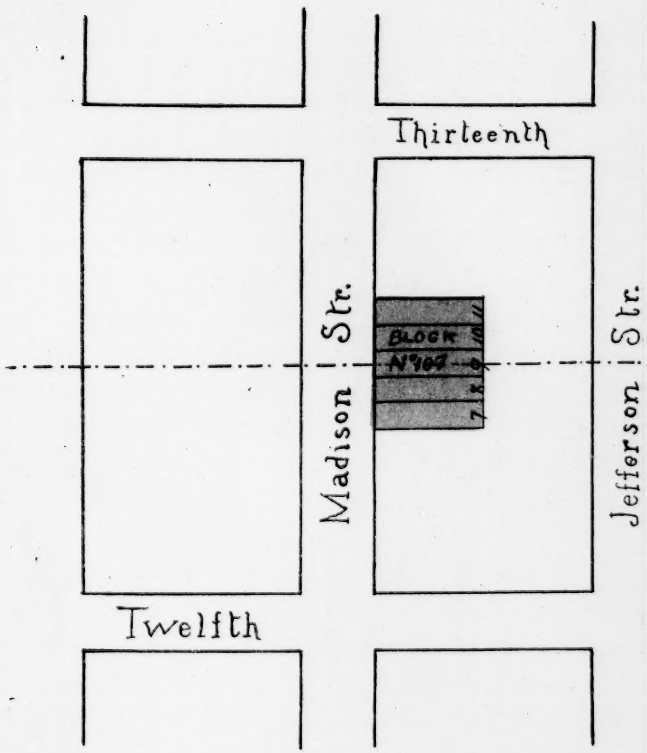
18 In U. S. Circuit Court for the Third Circuit, in the District of New Jersey.

In the Matter of the Application of the NORTH RIVER BRIDGE COMPANY to Condemn Lands of Susan Luxton.

Upon reading and filing the petition of the North River Bridge Company to appoint commissioners to examine and appraise certain lands of Susan Luxton situated in the city of Hoboken, Hudson county, New Jersey, required and necessary to be taken in the construction of approaches for the North River bridge as therein mentioned, and to assess the damages to be sustained in consequence of the taking and occupancy thereof, and whatever the said com-

No. 1106.
Luston
v.
Bridge Co.
p. 16.

Plot of 5 Lots in Hobol
on the Location of
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Deponent further saith that the annexed papers are a correct and particular description and map or survey of the land (being five lots) owned by Susan Luxton, and which lots are necessary
15 and required to be taken in the construction of the approaches for the said bridge, and that said company has endeavored to acquire said lots by purchase, but has been unable to agree with the said Susan Luxton as to the price therefor, and that the said company cannot agree with the said Susan Luxton for the use or the purchase thereof.

GUSTAV LINDENTHAL, *Ch'f Eng'r.*

Sworn and subscribed before me this twenty-third day of February, A. D. 1892.

L. D. FOWLER,
[L. S.] *Notary Public, N. J.*

All those certain five lots, tracts, or parcels of land and premises hereinafter particularly described, situate, lying, and being in the city of Hoboken, in the county of Hudson and State of New Jersey, and which are known and distinguished upon a certain map, entitled "Map of property situate at Hoboken, Hudson county, New Jersey, belong- to the estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen, Austin D. Ewen, city surveyors, New York," on file in the office of the register of the said county of Hudson, as lots numbered (7) seven, (8) eight, (9) nine, (10) ten, and (11) eleven, in block number (107) one hundred and seven, fronting and facing on the easterly side of Madison street, each lot being twenty-five feet front and rear by one hundred feet in depth throughout, as by referring to said map will more fully appear.

(Here follows map marked p. 16.)

17 (Endorsed:) U. S. circuit court, district of New Jersey. In the matter of the application of the North River Bridge Co. to condemn land of Susan Luxton. Petition, &c. Bedle, Muirheid, McGee & Bedle, Jr., att'ys of petitioner. Filed Feb. 29, 1892. S. D. Oliphant, clerk.

18 In U. S. Circuit Court for the Third Circuit, in the District of New Jersey.

In the Matter of the Application of the NORTH RIVER BRIDGE COMPANY to Condemn Lands of Susan Luxton.

Upon reading and filing the petition of the North River Bridge Company to appoint commissioners to examine and appraise certain lands of Susan Luxton situated in the city of Hoboken, Hudson county, New Jersey, required and necessary to be taken in the construction of approaches for the North River bridge as therein mentioned, and to assess the damages to be sustained in consequence of the taking and occupancy thereof, and whatever the said com-

missioners are authorized or required by law to assess, and the said petition and papers thereto annexed being verified by the oath of Gustav Lindenthal, the chief engineer of the said company, the court doth hereby assign Tuesday, the twenty-second day of March, eighteen hundred and ninety-two, at the hour of ten o'clock in the forenoon, at the United States Government building, in the city of Trenton, State of New Jersey, in which this court is held, as the time and place when and where the said court will proceed to hear the application in the said petition contained for the appointment of the commissioners therein named and to proceed thereon according to law.

The court doth also further direct the North River Bridge Company to give to the said Susan Luxton notice in writing that the lands referred to in said petition are required for the ap-
19 proaches to the North River bridge mentioned therein and of the said application and of the time and place so fixed for the hearing thereof and for the appointment of commissioners by serving an uncertified copy of the said petition and the description and map thereto annexed, together with a certified copy of this order, upon the said Susan Luxton at least ten days previous to the time so fixed for said hearing.

Dated this 29th day of February, 1892.

EDW. T. GREEN, *J.*

(Endorsed:) U. S. circuit court. In the matter of the application of the North River Bridge Company to condemn lands of Susan Luxton. Order appointing time for hearing. Filed Feb. 29, 1892. S. D. Oliphant, clerk.

20 In the U. S. Circuit Court for the Third Circuit, District of New Jersey.

In the Matter of the Application of the NORTH RIVER BRIDGE COMPANY to Condemn Land of Susan Luxton.

Order Appointing Commissioners, &c.

Whereas the North River Bridge Company hath heretofore made application to this court in writing by petition, to which reference is made for the full particulars thereof, setting forth, among other things, that the petitioner is a corporation duly organized under the provisions of an act of Congress of the United States entitled "An act to incorporate the North River Bridge Company and to authorize the construction of a bridge and approaches at New York city across the Hudson river, to regulate commerce in and over such bridge between the States of New York and New Jersey, and to establish such bridge a military and post-road," approved by the President July 11, 1890; also the location of the bridge across the North or Hudson river and the approaches thereto in New Jersey, as provided in the said act, and that the route of the approaches to said bridge as located runs over and across and includes certain

lands in the city of Hoboken, in the county of Hudson, State of New Jersey, which are owned by Mrs. Susan Luxton, who resides in Jersey City, State of New Jersey, which lands consist of five lots known and distinguished upon a certain map entitled "Map of property situate at Hoboken, Hudson county, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots November,
21 1860, by Daniel Ewen and Austin D. Ewen, city surveyors, New York," on file in the office of the register of the said county of Hudson, as lots numbered seven (7), eight (8), nine (9), ten (10), and eleven (11), in block number one hundred and seven (107), fronting and facing on the easterly side of Madison street, each lot being twenty-five feet front and rear by one hundred feet in depth throughout, and that said lots are required and necessary to be used and taken in the construction of said approaches, a description and map of which lots so necessary and required being annexed and referred to in and made a part of the said petition, and said lots being correctly laid down thereon, the centre line of the approach to said bridge running through the middle lot, the said map also corresponding with the Coster map above referred to and showing the correct location of the said lots, which lots are situate between 12th and 13th streets in the city of Hoboken as aforesaid, and the centre line of the approaches running through the middle lot of the five, and praying this court to appoint three disinterested, impartial, and judicious freeholders, residents of the said county in which said lands lie, to examine and appraise the said lands so required and necessary to be taken as aforesaid in the construction of the said approaches and to assess the damages to be sustained in consequence of said taking and occupancy thereof, and whatever said commissioners so to be appointed are authorized or required by law to assess, and also to appoint a time when and place where this court would hear the said application and make the said
22 appointment, and prescribe the notice to be given to said owner of the said lands of the said application and of the time and place of hearing the same, as by reference to the said petition will more fully appear;

And whereas this court did, on the twenty-ninth day of February, eighteen hundred and ninety-two, assign Tuesday, the twenty-second day of March, eighteen hundred and ninety-two, at the hour of ten o'clock in the forenoon, at the United States Government building, in the city of Trenton, State of New Jersey, in which this court is held, as the time and place when and where this court would proceed to hear the application in the said petition contained for the appointment of the commissioners therein named and to proceed thereon according to law;

And whereas this court did also further direct the North River Bridge Company to give to the said Susan Luxton notice in writing that the lands referred to in the said petition are required for the main approaches to the North River bridge mentioned therein, and of the said application and of the time and place so fixed for the hearing thereof and for the appointment of commissioners, by serving a copy of the said petition and the description and map

thereto annexed, together with a copy of the said order, upon the said Susan Luxton at least ten days previous to the time so fixed for said hearing;

And whereas it appears to the satisfaction of this court that notice hath been given as provided in the said order, and that a copy of the petition and a description and map thereto annexed,
23 with a copy of the said order, have been served as required therein, and all the provisions of the said order have been complied with, and Charles L. Corbin having appeared on the twenty-second day of March, eighteen hundred and ninety-two, on behalf of the said Susan Luxton as her attorney and counsel, being the time and at the place mentioned in the said order, and the hearing having been continued by consent of Joseph D. Bedle, counsel of the said company, and Charles L. Corbin, counsel of the said Susan Luxton, to the twenty-ninth day of March, eighteen hundred and ninety-two, the hour and place mentioned in the said order, and on that day the respective counsel aforesaid appearing before this court, the said Joseph D. Bedle for the petitioner and the said Charles L. Corbin against the appointment of commissioners as prayed for in the petition, and he, as the counsel of Mrs. Susan Luxton, desiring further time to be heard in the matter, further hearing was postponed to Wednesday, the sixth day of April, eighteen hundred and ninety-two, before this court to hear what further might be said upon the matter on either side, and the hearing upon the said application having been further continued by the court to the sixth day of April, eighteen hundred and ninety-two, and the counsel of the said Susan Luxton having been heard in opposition to the said application, he alleging that the act of Congress aforesaid is unconstitutional, and particularly that Congress could not confer the right of eminent domain upon the complainant; and the said counsel of the company having been heard in behalf of the said application and the court being satisfied that the matters and things in
24 the said petition set forth are true, and no sufficient cause being shown against the granting of the said application—

It is on this nineteenth day of April, eighteen hundred and ninety-two, by the court ordered that the said application be, and the same is hereby, granted, and this court, by virtue of the power and authority vested therein by law, doth hereby appoint John J. Toffey, George F. Perkins, and William Utz, three disinterested, impartial, and judicious freeholders, residents of the county of Hudson and State of New Jersey, commissioners to examine and appraise the said lands of the said Susan Luxton required and necessary to be taken by the North River Bridge Company, as is in said petition set forth, and to assess the damages to be sustained by her in consequence of the taking and occupancy thereof and whatever said commissioners are authorized by law to assess.

It is also further ordered that said commissioners do cause to be given to the said Susan Luxton and to the said company ten days' notice in writing of the time when and place where they will meet and proceed to execute their duties under this appointment. Lib-

erty is hereby given to either party to apply for further direction on notice.

Witness my hand and the seal of the court.

[L. S.] M. W. ACHESON,
Circuit Judge.

(Endorsed:) U. S. circuit court. In the matter of the application of the North River Bridge Company to condemn land of Susan Luxton. Order appointing commissioners, &c. Filed Apr. 28, 1892. S. D. Oliphant, clerk.

25 UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, third circuit, do hereby certify that the foregoing is a true transcript of the record and proceedings in the matter of the application of the North River Bridge Company to condemn land of Susan Luxton, as the same remain on file and of record in my office.

Seal of the U. S. Circuit Court, Dist. of New Jersey.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Trenton, in said district, this first day of July, A. D. 1892.

S. D. OLIPHANT, *Clerk.*

Endorsed on cover: Case No. 15,076. New Jersey C. C. U. S. Term No., 1106. Susan Luxton, plaintiff in error, *vs.* The North River Bridge Company. Filed July 7, 1892.